upon the administrator from the moment of the intestate's death.

I respectfully follow Lord Parker's observations in the case of *Meyappa Chetty* v. *Supramanian Chetty*[3], at page 609 quoted by the learned Judge. "An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant"; in my opinion, this also applies in the reverse. The representative capacity can only be proved by the production of the grant under seal or a certified copy thereof.

In my opinion, it is only on extracting the grant of letters of administration that the petitioner can be said to be duly clothed with a representative character and to have acquired a title to the estate. I am fortified in this view by the judgment of Scott L.J. in *Ingall* v. *Moran*[4], at page 164. In that case the plaintiff issued a writ in an action brought by him under the Law Reform (Miscellaneous Provisions) Act, 1934. He purported to sue in a representative capacity as administrator of his son's estate. The writ was issued in September 1942, but the grant of letters of administration was not taken out until November. Scott L.J. in his judgment observed that "at the time of writ issued the plaintiff had no shadow of title to his son's surviving chose in action, in respect of which he purported to issue a writ . . . . The defendant could have demanded production of the non-existent letters of administration, and on the plaintiff's failure to produce them the action would, on the defendant's application, automatically have been struck out." It was held in that case that as no letters of administration were taken out at the date of the writ, the writ was a nullity from the beginning and that the subsequent grant of letters of administration did not operate retrospectively so as to validate the action.

The case of *Issar Singh* v. *Samund Singh*[5], provides a suitable analogy, for in that case it was held that until the grant of letters of administration obtained in any part of the British Dominions outside the Federated Malay States had been resealed, the administrator had no administrative capacity so far as the Federated Malay States were concerned. Howes J. said: "the plaint might just as well have been signed by a stranger to the intestate — the plaintiff having no more rights in the intestate's property in the Federated Malay States than a stranger". In this case the defendants to this action are as much strangers to the intestate's estate as the plaintiff in the case cited. I wish to make it clear, however, that different considerations would have applied in the case of a creditor of an intestate suing an *executor de son tort* as such.

Mr. Lloyd for the plaintiffs contended that the extraction of the grant of letters of administration is merely a ministerial act. I am not disposed to take that view for the simple reason that the question of the sufficiency of security which has to be provided before extraction of the grant of letters of administration falls within the ambit of judicial discretion. The order that the grant do issue is, as I said, only a conditional order. It is inchoate and has no force and effect until the conditions referred to are complied with and the grant issued under seal.

In the light of *Ingall* v. *Moran*, the decisions in the former Singapore cases (1) *Muthoo Karuppan Chitty* v. *Onan & Ors.*[6] (2) *Ibrahim Sah* v. *Zahara Bee*[7], are no longer of persuasive authority. In *Ibrahim Sah* v. *Zahara Bee* Adrian Clark J. held that if during the pendency of the proceedings the grant of letters of administration is extracted there is an *ex post facto* validation of the earlier defect — a proposition which was expressly dissented from by the Court of Appeal in *Ingall* v. *Moran* and other subsequent decisions. Hyndman-Jones C.J. pointed out in the case of *Muthoo Karuppan Chitty* v. *Onan & Ors.* that where letters of administration had been granted, but the petitioner had not extracted the letters, further proceedings should be stayed until such grant was extracted. That is exactly what Scott L.J. in *Ingall* v. *Moran* said could not be done.

I am also aware of the unreported judgment of Thorne J. in the case of *Re Haji Mohamed Amin*, deceased, Perak Administration Petition 94 of 1931, where he held that an action against an administrator before the extraction of the grant of letters of administration was valid. With great respect to the learned Judge, I am unable to concur with his opinion.

The action is dismissed with costs.

Action dismissed.

Solicitors: *Shearn Delamore & Co.; Allen, Gledhill & Ball.*

FOO KOK HUI v. SARASWATHY & ANOR.

[O.C.J. (Ambrose J.) September 28, 1960]

[Singapore — Suit No. 1185 of 1959]

Landlord and Tenant — "Domestic premises" — Part used as a shop house — "Building used . . . chiefly as a separate dwelling" — Control of Rent Ordinance, (Cap. 242), ss.2 and 16.

This was a claim for possession of ground floor premises. The premises in question were 78 ft. long; 23 ft. of the front portion were used as a sundry goods shop, and the remaining part was used as a dwelling. The question for determination was whether the premises in question were used chiefly as a separate dwelling.

Held: as 70% of the floor space was used as a dwelling, the premises were used chiefly as a separate dwelling, and therefore the first defendant was protected by section 16 of the Control of Rent Ordinance.

ACTION.

J. L. P. Harris for the plaintiff.

K. K. Bezboruah for the defendants.

Ambrose J.: This was a claim for possession of the ground floor premises known as No. 363,

Joo Chiat Road, Singapore. Originally there were three defendants, but, as the third defendant had not been served with the writ and had ceased to reside in the premises, his name was ordered to be struck out from the title to the proceedings.

It was not disputed that the premises were let by the plaintiff in 1951 to V. P. Anjapillay, the first husband of the first defendant; that his contractual monthly tenancy was determined on the 30th April, 1956, by a notice to quit dated the 29th February, 1956; that he became a statutory tenant thereafter; and that he died on the 16th May, 1958.

It was proved that the first defendant was residing in the premises with her two children by the deceased on the 16th May, 1958; that she married her first husband in 1952; that she had been residing in the premises from 1952 except for a few months in 1958; that she married the second defendant in 1959; and that she was residing in the premises at the date of the hearing of this action with the second defendant, her child by him, and her two children by her first husband.

Counsel for the plaintiff contended that the first and second defendants were trespassers but conceded that the first defendant was protected by section 16 of the Control of Rent Ordinance, if the premises were domestic premises. Section 2 of the Ordinance defines "domestic premises" as "a building or part of a building used wholly or chiefly as a separate dwelling."

The question which fell to be considered was, therefore, whether the premises were used chiefly as a separate dwelling not only at the date of the death of the first defendant's first husband but also at the date of the hearing of this action. The ground floor excluding the five-foot way is 78 feet long. The front portion consists of a large room 43 feet long. The rear portion, which is 35 feet long, consists of a kitchen, a bathroom, and a lavatory. At both the material dates, the front part of the large room was used as a sundry goods shop, while the remaining part of the room and the rear portion of the premises were used as a dwelling. Of the total length of 78 feet, the shop took up 23 feet. As 70% of the floor space was thus used as a dwelling, it seemed to me that the premises were used to a greater extent for dwelling purposes. For this reason I came to the conclusion that the premises were used chiefly as a separate dwelling at both the material dates.

In my opinion, the first defendant was protected by section 16 of the Ordinance. As the second defendant was her second husband, I failed to see how he could be treated as a trespasser.

I therefore dismissed the claim and ordered the plaintiff to pay the defendant the costs of the action.

Claim dismissed.

Solicitors: *Braddell Bros.; K. K. Bezboruah.*

A OMNIBUS CO. LTD. v. GOVERNMENT OF THE FEDERATION OF MALAYA

[C.A. (Thomson C.J., Hill J.A., and Ong J.) December 12, 1960]

[K.L. — F.M. Civil Appeal No. 44 of 1960]

Income Tax — Deduction at source — Debt to Government — Income Tax Ordinance, 1947, s.40.

The appellant is a limited liability company. Its share capital consists of 15,010 fully-paid shares of $1 each. Its only asset, apart from a small sum in cash at the Bank, consists of 31,192 fully-paid shares of $1 in another company, the *B* Omnibus Company (Perak) Ltd. The only business which it carries on in fact is to receive dividends from the Company and distribute them to its shareholders.

The *A* Company, the *B* Company and the shareholders in both companies are all resident in the Federation.

The general practice of the *A* Company was to distribute to its shareholders by way of dividends practically all the money it received from the *B* Company. The present litigation arises from what it did in 1956 in accordance with that practice.

In 1956 the tax liability of the *A* Company was $14,722, that sum being calculated on its actual profits for the year 1955. In 1956, the gross dividends payable by the *B* Company to the *A* Company amounted to $77,980 from which the *B* Company deducted $23,394 for Income Tax under section 40 of the Income Tax Ordinance. The amount actually received by the *A* Company in 1956 thus amounted to $54,486, but at the same time it received from the *B* Company certificates of deduction under section 40 amounting to $23,394.

After administrative expenses, the profit for the year was $54,257. The Directors then declared dividends amounting to 500% on the share capital less 30% Income Tax. Payments to the shareholders, all in 1956 amounting to $52,535 were made but they accompanied these payments with dividend certificates purporting to be "pursuant to section 40(2) of the Income Tax Ordinance" stating that the dividends amounted to $75,050, which is 500% of the share capital, and that $22,515 had been deducted being "Income Tax at 30%."

The Income Tax authorities taking the view that what the *A* Company had done was to pay dividends amounting to $75,050 from which there had been made an Income Tax deduction of $22,515, claimed that by virtue of the provisions of section 40 of the Ordinance a debt was owed to the Government consisting of the amount by which the amount of the deductions exceeded the amount of Income Tax payable by the Company that difference being $7,793. Smith J. gave judgment for the Government. The Company appealed.

Held (Hill J.A. and Ong J., Thomson C.J. dissenting): (1) for any part of section 40 to apply, the following conditions must be present namely (i) the Company must be resident in the Federation, and (ii) the Company itself must have paid tax or be liable to pay tax at the fixed rate so as to be entitled to deduct tax in respect of dividends. The section applies only to an income from which tax is deductible;

(2) the income received and distributed by the appellant company was not a chargeable or assessable income as tax deductions in full had already been made by the *B* Company, and no further deductions could legally be made therefrom, and the appellant company was not therefore entitled to make any.

Cases referred to:—

(1) *Sarat Chunder Dey* v. *Gopal Chunder Laha* (1892), 19 I.A. 203, 215; I.L.R. 20 Cal. 296.

(2) *R.* v. *Norfold Co.* 60 L.J. Q.B. 380.

(3) *Ex p. Walton* (1881) 17 Ch. D. 746 at p. 756.

(4) *Inland Revenue Commissioners* v. *Cull* [1938] 2 K.B. 109, 120; [1938] 1 All E.R. 467.